

1 **Rule 64. Writs in general.**

2 (a) **Definitions.** As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

3 (a)(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any
4 other claim.

5 (a)(2) "Defendant" means the party against whom a claim is filed or against
6 whom judgment has been entered.

7 (a)(3) "Deliver" means actual delivery or to make the property available for pick
8 up and give to the person entitled to delivery written notice of availability.

9 (a)(4) "Disposable earnings" means that part of earnings for a pay period
10 remaining after the deduction of all amounts required by law to be withheld.

11 (a)(5) "Earnings" means compensation, however denominated, paid or payable
12 to an individual for personal services, including periodic payments pursuant to a
13 pension or retirement program. Earnings accrue on the last day of the period in
14 which they were earned.

15 (a)(6) "Notice of exemptions" means a form that advises the defendant or a third
16 person that certain property is or may be exempt from seizure under state or federal
17 law. The notice shall list examples of exempt property and indicate that other
18 exemptions may be available. The notice shall instruct the defendant of the deadline
19 for filing a reply and request for hearing.

20 (a)(7) "Officer" means any person designated by the court to whom the writ is
21 issued, including a sheriff, constable, deputy thereof or any person appointed by the
22 officer to hold the property.

23 (a)(8) "Plaintiff" means the party filing a claim or in whose favor judgment has
24 been entered.

25 (a)(9) "Property" means the defendant's property of any type not exempt from
26 seizure. Property includes but is not limited to real and personal property, tangible
27 and intangible property, the right to property whether due or to become due, and an
28 obligation of a third person to perform for the defendant.

29 (a)(10) "Serve" with respect to parties means any method of service authorized
30 by Rule 5 and with respect to non-parties means any manner of service authorized
31 by Rule 4.

32 (b) **Security.**

33 (b)(1) **Amount.** When security is required of a party, the party shall provide
34 security in the sum and form the court deems adequate. For security by the plaintiff
35 the amount should be sufficient to reimburse other parties for damages, costs and
36 attorney fees incurred as a result of a writ wrongfully obtained. For security by the
37 defendant, the amount should be equivalent to the amount of the claim or judgment
38 or the value of the defendant's interest in the property. In fixing the amount, the court
39 may consider any relevant factor. The court may relieve a party from the necessity of
40 providing security if it appears that none of the parties will incur damages, costs or
41 attorney fees as a result of a writ wrongfully obtained or if there exists some other
42 substantial reason for dispensing with security. The amount of security does not
43 establish or limit the amount of damages, costs or attorney fees recoverable if the
44 writ is wrongfully obtained.

45 (b)(2) **Jurisdiction over surety.** A surety submits to the jurisdiction of the court
46 and irrevocably appoints the clerk of the court as agent upon whom papers affecting
47 the surety's liability may be served. The surety shall file with the clerk of the court the
48 address to which the clerk may mail papers. The surety's liability may be enforced
49 on motion without the necessity of an independent action. If the opposing party
50 recovers judgment or if the writ is wrongfully obtained, the surety will pay the
51 judgment, damages, costs and attorney fees not to exceed the sum specified in the
52 contract. The surety is responsible for return of property ordered returned.

53 (b)(3) **Objection.** The court may issue additional writs upon the original security
54 subject to the objection of the opposing party. The opposing party may object to the
55 sufficiency of the security or the sufficiency of the sureties within five days after
56 service of the writ. The burden to show the sufficiency of the security and the
57 sufficiency of the sureties is on the proponent of the security.

58 (b)(4) **Security of governmental entity.** No security is required of the United
59 States, the State of Utah, or an officer, agency, or subdivision of either, nor when
60 prohibited by law.

61 (c) **Procedures in aid of writs.**

62 (c)(1) **Referee.** The court may appoint a referee to monitor hearings under this
63 subsection.

64 (c)(2) **Hearing; witnesses; discovery.** The court may conduct hearings as
65 necessary to identify property and to apply the property toward the satisfaction of the
66 judgment or order. Witnesses may be subpoenaed to appear, testify and produce
67 records. The court may permit discovery.

68 (c)(3) **Restraint.** The court may forbid any person from transferring, disposing or
69 interfering with the property.

70 (d) Issuance of writ; service

71 (d)(1) **Clerk to issue writs.** The clerk of the court shall issue writs. A court in
72 which a transcript or abstract of a judgment or order has been filed has the same
73 authority to issue a writ as the court that entered the judgment or order. If the writ
74 directs the seizure of real property, the clerk of the court shall issue the writ to the
75 sheriff of the county in which the real property is located. If the writ directs the
76 seizure of personal property, the clerk of the court may issue the writ to an officer of
77 any county.

78 (d)(2) **Content.** The writ may direct the officer to seize the property, to keep the
79 property safe, to deliver the property to the plaintiff, to sell the property, or to take
80 other specified actions. If the writ is to enforce a judgment or order for the payment
81 of money, the writ shall specify the amount ordered to be paid and the amount due.

82 (d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to
83 the writ plaintiff's affidavit, detailed description of the property, notice of hearing,
84 order authorizing the writ, notice of exemptions and reply form.

85 (d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk
86 shall attach to the writ plaintiff's affidavit and detailed description of the property.

87 (d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ
88 plaintiff's application, detailed description of the property, the judgment, notice of
89 exemptions and reply form.

90 (d)(3) **Service.**

91 (d)(3)(A) **Upon whom; effective date.** The officer shall serve the writ and
92 accompanying papers on the defendant, and, as applicable, the garnishee and
93 any person named by the plaintiff as claiming an interest in the property. The
94 officer may simultaneously serve notice of the date, time and place of sale. A writ
95 is effective upon service.

96 (d)(3)(B) **Limits on writs of garnishment.**

97 (d)(3)(B)(i) A writ of garnishment served while a previous writ of
98 garnishment is in effect is effective upon expiration of the previous writ;
99 otherwise, a writ of garnishment is effective upon service.

100 (d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at
101 one time. One additional writ of garnishment of earnings for a subsequent pay
102 period may be served on the garnishee while an earlier writ of continuing
103 garnishment is in effect.

104 (d)(3)(C) **Return; inventory.** Within ~~40~~14 days after service, the officer shall
105 return the writ to the court with proof of service. If property has been seized, the
106 officer shall include an inventory of the property and whether the property is held
107 by the officer or the officer's designee. If a person refuses to give the officer an
108 affidavit describing the property, the officer shall indicate the fact of refusal on the
109 return, and the court may require that person to pay the costs of any proceeding
110 taken for the purpose of obtaining such information.

111 (d)(3)(D) **Service of writ by publication.** The court may order service of a
112 writ by publication upon a person entitled to notice in circumstances in which
113 service by publication of a summons and complaint would be appropriate under
114 Rule 4.

115 (d)(3)(D)(i) If service of a writ is by publication, substantially the following
116 shall be published under the caption of the case:

117 To _____, [Defendant/Garnishee/Claimant]:

118 A writ of _____ has been issued in the above-captioned case
119 commanding the officer of _____ County as follows:

120 [Quoting body of writ]

121 Your rights may be adversely affected by these proceedings. Property in
122 which you have an interest may be seized to pay a judgment or order. You
123 have the right to claim property exempt from seizure under statutes of the
124 United States or this state, including Utah Code, Title 78B, Chapter 5, Part 5.

125 (d)(3)(D)(ii) The notice shall be published in a newspaper of general
126 circulation in each county in which the property is located at least ~~40~~14 days
127 prior to the due date for the reply or at least ~~40~~14 days prior to the date of
128 any sale, or as the court orders. The date of publication is the date of service.

129 **(e) Claim to property by third person.**

130 (e)(1) **Claimant's rights.** Any person claiming an interest in the property has the
131 same rights and obligations as the defendant with respect to the writ and with
132 respect to providing and objecting to security. Any claimant named by the plaintiff
133 and served with the writ and accompanying papers shall exercise those rights and
134 obligations within the same time allowed the defendant. Any claimant not named by
135 the plaintiff and not served with the writ and accompanying papers may exercise
136 those rights and obligations at any time before the property is sold or delivered to the
137 plaintiff.

138 (e)(2) **Join claimant as defendant.** The court may order any named claimant
139 joined as a defendant in interpleader. The plaintiff shall serve the order on the
140 claimant. The claimant is thereafter a defendant to the action and shall answer within
141 ~~40~~14 days, setting forth any claim or defense. The court may enter judgment for or
142 against the claimant to the limit of the claimant's interest in the property.

143 (e)(3) **Plaintiff's security.** If the plaintiff requests that an officer seize or sell
144 property claimed by a person other than the defendant, the officer may request that
145 the court require the plaintiff to file security.

146 **(f) Discharge of writ; release of property.**

147 (f)(1) **By defendant.** At any time before notice of sale of the property or before
148 the property is delivered to the plaintiff, the defendant may file security and a motion
149 to discharge the writ. The plaintiff may object to the sufficiency of the security or the
150 sufficiency of the sureties within ~~five~~7 days after service of the motion. At any time
151 before notice of sale of the property or before the property is delivered to the plaintiff,
152 the defendant may file a motion to discharge the writ on the ground that the writ was
153 wrongfully obtained. The court shall give the plaintiff reasonable opportunity to
154 correct a defect. The defendant shall serve the order to discharge the writ upon the
155 officer, plaintiff, garnishee and any third person claiming an interest in the property.

156 (f)(2) **By plaintiff.** The plaintiff may discharge the writ by filing a release and
157 serving it upon the officer, defendant, garnishee and any third person claiming an
158 interest in the property.

159 (f)(3) **Disposition of property.** If the writ is discharged, the court shall order any
160 remaining property and proceeds of sales delivered to the defendant.

161 (f)(4) **Copy filed with county recorder.** If an order discharges a writ upon
162 property seized by filing with the county recorder, the officer or a party shall file a
163 certified copy of the order with the county recorder.

164 (f)(5) **Service on officer; disposition of property.** If the order discharging the
165 writ is served on the officer:

166 (f)(5)(A) before the writ is served, the officer shall return the writ to the court;

167 (f)(5)(B) while the property is in the officer's custody, the officer shall return
168 the property to the defendant; or

169 (f)(5)(C) after the property is sold, the officer shall deliver any remaining
170 proceeds of the sale to the defendant.

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